

## § 4281.2

## 29 CFR Ch. XL (7–1–12 Edition)

for applying for financial assistance from the PBGC under section 4261 of ERISA. The plan valuation rules in this part also apply to the determination of reallocation liability under section 4219(c)(1)(D) of ERISA and subpart B of part 4219 of this chapter for multiemployer plans that undergo mass withdrawal (with or without termination).

(2) *Scope.* This part applies to multiemployer plans covered by title IV of ERISA that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA). Subpart B of this part also applies to covered multiemployer plans that have undergone mass withdrawal without terminating.

(b) *Subpart B.* Subpart B establishes rules for determining the value of multiemployer plan benefits and assets, including outstanding claims for withdrawal liability, for plans required to perform annual valuations under section 4281(b) of ERISA or allocate unfunded vested benefits under section 4219(c)(1)(D) of ERISA.

(c) *Subpart C.* Subpart C sets forth procedures under which the plan sponsor of a terminated plan shall amend the plan to reduce benefits subject to reduction in accordance with section 4281(c) of ERISA and § 4041A.24(b) of this chapter. Subpart C applies to a plan for which the annual valuation required by § 4041A.24(a) indicates that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets (including claims for withdrawal liability) if, at the end of the plan year for which that valuation was done, the plan provided any benefits subject to reduction. Benefit reductions required to be made under subpart C shall not apply to accrued benefits under plans or plan amendments adopted on or before March 26, 1980, or under collective bargaining agreements entered into on or before March 26, 1980.

(d) *Subpart D.* Subpart D sets forth the procedures under which the plan sponsor of an insolvent plan must suspend benefit payments and issue insolvency notices in accordance with section 4281(d) of ERISA and § 4041A.25 (c) and (d) of this chapter. Subpart D ap-

plies to a plan that has been amended under section 4281(c) of ERISA and subpart C of this part to eliminate all benefits subject to reduction and to a plan that provided no benefits subject to reduction as of the date on which the plan terminated.

### § 4281.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, employer, ERISA, fair market value, IRS, insurer, irrevocable commitment, mass withdrawal, multiemployer plan, nonforfeitable benefit, normal retirement age, PBGC, person, plan, plan administrator, and plan year.

In addition, for purposes of this part:

*Available resources* means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

*Benefits subject to reduction* means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

*Financial assistance* means financial assistance from the PBGC under section 4261 of ERISA.

*Insolvency benefit level* means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

*Insolvency year* means insolvency year as described in section 4245(b)(4) of ERISA.

*Insolvent* means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c), or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

*Pro rata* means that the required benefit reduction or payment shall be allocated among affected participants in the same proportion that each such participant's nonforfeitable benefits under the plan bear to all nonforfeitable benefits of those participants under the plan.

*Reasonably expected to enter pay status* means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

*Resource benefit level* means resource benefit level as described in section 4245(b)(2) of ERISA.

*Valuation date* means the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

#### § 4281.3 Filing and issuance rules.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* See § 4281.32(c) for notices of benefit reductions, § 4281.43(e) for notices of insolvency, and § 4281.45(c) for notices of insolvency benefit level.

(c) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(d) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

(e) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

[68 FR 61357, Oct. 28, 2003]

#### § 4281.4 Collection of information.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under control number 1212-0032.

### Subpart B—Valuation of Plan Benefits and Plan Assets

#### § 4281.11 Valuation dates.

(a) *Annual valuations of mass-withdrawal-terminated plans.* The valuation dates for the annual valuation required under section 4281(b) of ERISA shall be the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

(b) *Valuations related to mass withdrawal reallocation liability.* The valuation date for determining the value of unfunded vested benefits (for purposes of allocation) under section 4219(c)(1)(D) of ERISA shall be—

(1) If the plan terminates by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) If substantially all the employers withdraw from the plan pursuant to an agreement or arrangement to withdraw from the plan, the last day of the plan year as of which substantially all employers have withdrawn from the plan pursuant to the agreement or arrangement.

#### § 4281.12 Benefits to be valued.

(a) *Form of benefit.* The plan sponsor shall determine the form of each benefit to be valued, without regard to the form of benefit valued in any prior year, in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan sponsor shall value the form of benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit that, under the terms of the plan or applicable law, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan sponsor shall value benefits whose starting date is subject to election—